In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1672

ALMADEN VOLKSWAGEN, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

1. In an unfair labor practice proceeding, the National Labor Relations Board found that petitioner ("the Company") had violated Section 8(a)(1) and (3) of the National Labor Relations Act, 29 U.S.C. 158(a)(1) and (3), by interfering with the rights of its employees to engage in union activities, and by discharging employee Thomas M. Garbez because of his support of the Union[1] and conditioning his reinstatement upon resignation from the Union (A. 8, 12-13, 15, 18, 24).[2] The Board

[1] Automobile Salesmen's Union, Local 1095, Retail Clerks International Association, AFL-CIO.

[2] "A." references are to the Appendix filed with the court below, which we are lodging with the Clerk.

further found that the Union had obtained valid authorization cards from a majority of the employees in an appropriate unit (A. 21), and that, in view of the extensive unfair labor practices, the Company violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union (A. 23). The Board ordered the Company to cease and desist from the unfair labor practices; to reinstate with backpay the discharged employee; and to bargain with the Union upon request (A. 26-28; Pet. App. C, pp. vi-vii). The court of appeals enforced the Board's order in full (Pet. App. A).

2. Petitioner does not challenge the Board's findings that it violated Section 8(a)(1) and (3) of the Act, or that it refused to bargain with the Union. Instead, relying in part upon this Court's decision in *National Labor Relations Board* v. *Gissel Packing Co.*, 395 U.S. 575, it contends that the Board's bargaining order was improper. This contention was properly rejected below (see *e.g.*, Pet. App. C, pp. v-vi) and further review is unwarranted.

a. Petitioner contends that the authorization cards designating the Union as the employees' bargaining representative were invalid because they were conditioned upon the signer's admission into membership in the Union. The cards, however, recited: "I authorize the RETAIL CLERKS INTERNATIONAL ASSOCIATION to represent me for the purposes of collective bargaining and handling of grievances, either directly or through such local union as it may designate" (Pet. App. D). The Union representatives not only read the above-quoted statement to the employees before they signed the cards but also emphasized that execution of the cards authorized the Union to act as their bargaining representative (A. 21-22). Under these circumstances each signatory

intended to authorize the Union to represent him for collective bargaining purposes, and the cards were valid authorizations. *National Labor Relations Board* v. *Gissel Packing Co., supra,* 395 U.S. at 584.[3]

b. Petitioner also contends (Pet. 9-10) that review by this Court is warranted to resolve "the issue of 'dual-purpose cards' " (Pet. 9). That issue, however, is not presented here, since the authorization cards in the instant case (Pet. App. D) are authorizations for collective bargaining and are not dual purpose.[4]

c. Finally, petitioner contends (Pet. 10-11) that the court of appeals should have considered employee turnover in determining whether the Board's bargaining order was proper. Since petitioner did not raise this issue before either the Board or the court below, it cannot raise that issue now. See *Marshall Field &*

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[3] Contrary to petitioner's suggestion (Pet. 8), neither the employees' failure to complete the information requested on the cards (information which was, in any event, provided on an accompanying "information sheet") nor the Union's failure to "act upon" the membership applications affects the validity of the cards. The touchstone in determining the validity of authorization cards is "not whether membership [in the Union] was perfected, * * * [but] whether the card signers intended to designate the Union as their collective bargaining representative" (A. 22). See *Lebanon Steel Foundry* v. *National Labor Relations Board,* 130 F. 2d 404, 407 (C.A.D.C.), certiorari denied, 317 U.S. 659.

[4] The issue referred to arises when it is not clear whether union members thought they were signing cards authorizing the union to represent them "for collective bargaining purposes or merely to authorize it to seek an election to determine that issue." *National Labor Relations Board* v. *Gissel Packing, Inc., supra,* 395 U.S. at 604.

Co. v. *National Labor Relations Board,* 318 U.S. 253, 255-236.[5]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

JULY 1973.

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[5] In any event, turnover of personnel presents no bar to the enforcement of the Board's bargaining order. *Franks Bros. Co.* v. *National Labor Relations Board,* 321 U.S. 702, 705; *National Labor Relations Board* v. *Katz,* 369 U.S. 736, 748, n. 16; *National Labor Relations Board* v. *Gissel Packing Co., supra,* 395 U.S. at 610, especially where as here, the loss of Union employees is linked to unfair labor practices discouraging Union membership (see A. p. 23-24).